IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 578 OF 2006
IN
NOTICE OF MOTION NO. 691 OF 2005
IN
SUIT NO. 473 OF 2005

Shailaja Shantaram Wagle & Ors. .. Appellants.

V/s.

Shardaben Chandulal Shah & Others. .. Respondents.

Mr. S.B.Prabhavalkar for the Appellants.

Mr.M.L.Palan i/by M/s.Dave & Co. for the Respondents.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 25TH AUGUST, 2006.

P.C.:

. We heard Mr.S.B.Prabhavalkar, counsel for the Appellants for some time.

2. The learned motion Judge noticed that initially the Applicants' mother - Sarojini took out notice of motion for setting aside the exparte decree dated 4th of March, 2002, which came to be dismissed on 21st of February, 2003. Thereafter, the present suit has been filed by her daughters, seeking declaration that exparte decree dated 4th March, 2002 in Suit No. 922 of 1980 is

not binding on them. The learned motion Judge has observed that this is an obvious attempt on the part of the applicants -plaintiffs to stake claim to the suit property after their mother failed in getting the decree set aside.

3. We agree with the aforesaid observation of the learned motion Judge and, in view thereof, no justifiable ground to interfere with the impugned order dated July 28, 2006, in so far as dismissal of notice of motion No. 691 of 2005 in Suit No.473 of 2005 is concerned, is made out.

4. It is clarified that this order shall have no bearing in consideration of the Appeal No.579 of 2006.

5. The Appeal is dismissed in limine.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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